

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERYL MEISLER

Plaintiff,

- against -

LUEMME, INC.

Defendant.

Docket No. 17-cv-6348

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Meryl Meisler (“Meisler” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Luemme, Inc. (“Luemme” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of two copyrighted photographs. One of singer and songwriter Grace Jones and another of a Club Neon woman. Both are owned and registered by Meisler, a New York based professional photographer. Accordingly, Meisler seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b).

PARTIES

5. Meisler is a professional photographer in the business of licensing her photographs to online and print outlets for a fee having a usual place of business at 345 Eighth Avenue, Apt. 18H, New York, New York 10001.

6. Upon information and belief, Luemme is a profit corporation duly organized and existing under the laws of the State of Florida, with a place of business at 12186 SW 128 Street, Miami, Florida 33186. At all times material hereto, Luemme has owned and operated a website at the URL: www.Cosabella.com (the "Website")

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photographs

7. Meisler photographed singer song writer Grace Jones at the opening night of La Farfalle in New York and a Club Neon Woman (the "Photographs"). True and correct copies of the Photographs are attached hereto as Exhibit A.

8. Meisler is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with United States Copyright Office and were given Copyright Registration Number VA 1-967-421.

B. Defendant's Infringing Activities

10. Luemme ran an article on the Website entitled *Cosabella Does Disco: The Fall 2017 Collection*. See <https://www.cosabella.com/blog/cosabella-disco-fall-2017-collection/>. The

article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit B.

11. The article was written by Luemme.
12. The Photographs appears on Luemme's computer servers.
13. Luemme did not license the Photographs from Plaintiff for its article, nor did Luemme have Plaintiff's permission or consent to publish the Photographs on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST LUEMME)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.
15. Luemme infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Luemme is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.
16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.
17. Upon information and belief, the foregoing acts of infringement by Luemme have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.
18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Luemme be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
August 21, 2017

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